

MJS  
Bennington, VT

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GREEN MOUNTAIN COMMUNITY NETWORK,  
INC.

Employer

and

Case 01-RC-127082

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN  
AND HELPERS UNION NO. 597 a/w  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS<sup>1</sup>

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered an objection and a determinative challenge in an election held May 28, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 11 for and 10 against the Petitioner, with 1 challenged ballot, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations,<sup>2</sup> and finds that a certification of representative should be issued.

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<sup>1</sup> We have corrected the caption to reflect the correct spelling of the Petitioner's name. We have also corrected the unit description to conform to the Stipulated Election Agreement.

<sup>2</sup> In adopting the hearing officer's recommendation to sustain the challenge to the ballot cast by Medicaid Coordinator Dawn Julius, we rely solely on the hearing officer's finding that the position is excluded from the unit by the express language of the Stipulated Election Agreement. We do not rely on any implication in the hearing officer's report that the exclusion of Julius from the initial eligibility list supplied by the Employer is extrinsic evidence of the parties' intent.

## CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Chauffeurs, Teamsters, Warehousemen and Helpers Union No. 597 a/w International Brotherhood of Teamsters, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time bus drivers, van drivers, and maintenance employees employed by the Employer at its Bennington, Vermont location but,

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Because a majority of the ballots were cast in favor of the Petitioner, we find it unnecessary to pass on the Petitioner's objection.

Member Miscimarra believes, as the hearing officer found, that the Stipulated Election Agreement is unambiguous in its description of job classifications, and not the work performed. Although the unit includes, among others, "bus drivers" and "van drivers," this description is distinguishable from the unit at issue in *Harold J. Becker*, 343 NLRB 51, 51 fn. 3 (2004), cited by the Employer, which plainly described the unit in terms referencing the performance of certain work, encompassing "all employees of the [employer] *engaged in sheet metal work . . .*" (emphasis added). Member Miscimarra further notes that, although any phrase ending with the word "drivers" can sometimes be regarded as describing the type of driver, it is advisable for the Board, whenever reasonable, to regard such references in unit descriptions as job classifications because the resulting bargaining unit will have greater stability than a unit defined by work performed, because the latter is more likely to give rise to questions regarding the scope of the unit if job responsibilities change and questions about whether new or different job assignments might be non-mandatory bargaining subjects (because they potentially alter the unit), among other things. See generally *Antelope Valley Press*, 311 NLRB 459 (1993).

Member Johnson agrees with the hearing officer's recommendation to sustain the challenge to Julius's ballot. He believes that where the stipulated unit description is otherwise unambiguous, the mere fact that the classifications set forth in the stipulation do not *precisely* match the employer's actual classifications should not render the stipulation ambiguous. So long as the job classifications contained in the stipulation are reasonable variants of the employer's actual classifications, Member Johnson would find that the parties intended to include the actual classifications. See, e.g., *USF Reddaway*, 349 NLRB 329 (2007) (finding that even though the employer's actual classifications were more specific than those in the unit description in the stipulated election agreement, a "reasonable reading [of the stipulated election agreement] would be that all of [the employer's] classifications were meant to be included," but nevertheless finding the stipulated election agreement ambiguous for other reasons).

Member Schiffer likewise agrees that the language of the stipulation unambiguously excluded Julius from the unit and thus the challenge to her ballot should be sustained. Even if the language had been ambiguous, though, Member Schiffer still would have found that Julius should not be included in the unit because, under a dual-function analysis, Julius did not drive enough to have a substantial interest in the wages, hours and working conditions of the unit drivers. *Harold J. Becker Co.*, 343 NLRB 51, 51 (2004).

excluding all other employees, dispatchers, clerical employees, managers, guards, and supervisors as defined in the Act.

Dated, Washington, D.C., December 16, 2014.

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Philip A. Miscimarra,	Member
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Harry I. Johnson, III,	Member
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Nancy Schiffer,	Member
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NATIONAL LABOR RELATIONS BOARD